



Office of the Ohio Public Defender

Timothy Young, State Public Defender

MEMORANDUM

DATE: January 29, 2021
TO: County Commissioners, County Auditors, County Public Defenders, Court
Appointed Counsel, Judges
FROM: State Public Defender Tim Young
RE: Indigent Defense Reimbursement Update

In response to the recent decision by the Supreme Court of Ohio regarding indigent parents facing the termination of their parental rights in adoption proceedings in probate courts, I write today to provide an update on the Office of the Ohio Public Defender (OPD) providing indigent defense reimbursement in these matters.

The Supreme Court of Ohio issued an opinion on December 22, 2020 in case number [2020-Ohio-6785](#) (slip opinion linked for ease of reference), in which the Court found Ohio Revised Code 2151.352 “[U]nconstitutionally underinclusive as applied to indigent parents facing the loss of their parental rights in probate court. Instead of declaring the statute unconstitutional on its face, and significantly disrupting the multifarious juvenile-court proceedings in the state, we declare that indigent parents are entitled to counsel in adoption proceedings in probate court as a matter of equal protection of the law under the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution.”

Based on this finding, the OPD will immediately begin to accept indigent defense costs in cases where a parent who is indigent is facing a termination of parental rights in probate court for purposes of reimbursement. Below are further details regarding fee schedules, indigency determinations, and the indigency application fee.

Fee Schedules

Pursuant to Ohio Revised Code 120.33, in order to qualify for reimbursement, County Commissions should ensure their respective county fee schedule allows for indigent defense counsel fees to be provided in parental termination cases in probate court. The OPD will be publishing a revised State Fee Schedule in July 2021. Until the revised schedule is published, this memo will serve as notice that the State Fee Schedule will have a maximum fee for a parental termination cases in probate court of \$2,500, with an in-court and out-of-court rate of \$75 per hour.

Determination of Indigency

Pursuant to Ohio Revised Code 120.05, a finding of indigency for the parent in a parental termination case must be made in order for the indigent defense costs to qualify for reimbursement. The same indigency [standards](#) and [form](#) should be used in these cases as they are in all other indigent defense cases.

Indigency Application Fee

Ohio Revised Code 120.36(A) provides, in part, when a person who is a defendant in a criminal case or a party in a case in juvenile court requests or is provided a public defender or court appointed counsel, the court in which the criminal case is initially filed or the juvenile court, whichever is applicable, shall assess, unless the application fee is waived or reduced, a non-refundable application fee of twenty-five dollars. As the statute governing the application fee does not include cases in probate court, the OPD opines that this is an area that will need to be addressed by the Ohio Legislature; accordingly, will be starting discussions to resolve the matter.

If you have any questions, or if there are ways in which the OPD can be of assistance on this topic, please contact Laura Austen, Deputy Director – Policy & Outreach (laura.austen@opd.ohio.gov). Thank you.

